

## **RESOLUTION NO. SA-12-16**

**RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("SUCCESSOR AGENCY") (i) ACKNOWLEDGING AND REAFFIRMING THE SUCCESSOR AGENCY'S RIGHTS AND OBLIGATIONS SET FORTH IN THE DISPOSITION AND DEVELOPMENT AGREEMENT DATED DECEMBER 16, 2010 ("DDA") ENTERED INTO BY AND BETWEEN IMPERIAL COAST, L.P. AND THE IMPERIAL BEACH REDEVELOPMENT AGENCY ("REDEVELOPMENT AGENCY"), PREDECESSOR IN INTEREST OF SUCCESSOR AGENCY, AND ALL DOCUMENTS EXECUTED BY THE REDEVELOPMENT AGENCY PURSUANT TO THE DDA AND (ii) APPROVING, AUTHORIZING, AND DIRECTING THE SUCCESSOR AGENCY'S ACCEPTANCE FROM THE CITY OF IMPERIAL BEACH ("CITY") OF ALL OF THE CITY'S OWNERSHIP INTEREST IN THE REAL PROPERTY LOCATED AT 800 SEACOAST DRIVE, IMPERIAL BEACH, CALIFORNIA RECEIVED BY THE CITY PURSUANT TO THAT CERTAIN GRANT DEED EXECUTED ON MARCH 9, 2011 AND RECORDED WITH THE COUNTY OF SAN DIEGO, CALIFORNIA, ON MARCH 17, 2011**

**WHEREAS**, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("CRL"); and

**WHEREAS**, the City Council of the City adopted redevelopment plans for the City's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

**WHEREAS**, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

**WHEREAS**, in order to effectuate the redevelopment of certain real property located at 800 Seacoast Drive, in the City of Imperial Beach, State of California, and referenced by Assessor Parcel Number: 625-262-01-00 (ptn) ("Property"), and related public improvements in accordance with the Redevelopment Plan ("Redevelopment Plan") for the Palm Avenue/Commercial Redevelopment Project Area, the Redevelopment Agency and Imperial Coast, L.P., a California limited partnership ("Developer"), entered into that certain Disposition and Development Agreement dated December 16, 2010 ("DDA"); and

**WHEREAS**, the DDA provides for the acquisition of fee title of the Property by the Redevelopment Agency from the Developer, the payment by the Redevelopment Agency to the Developer for the cost of certain off-site public improvements and plans, the ground leasing of the Property from the Redevelopment Agency to the Developer or its assignee Seacoast Inn, L.P., a California limited partnership ("Tenant", "Lessee", and "Assignee"), and the grant of an option to the Developer or its Assignee to purchase back fee title of the Property from the Redevelopment Agency upon the complete satisfaction of certain performance standards by the Developer or its Assignee, in accordance with the terms of the DDA; and

**WHEREAS**, Section 33220 of the CRL provides that certain public bodies may aid and cooperate in the planning, undertaking, construction or operation of redevelopment projects; and

**WHEREAS**, pursuant to such authority set forth in the CRL and other applicable law, the Redevelopment Agency and the City entered in that certain Assignment and Assumption Agreement dated March 9, 2011, and that certain First Amendment to Assignment and Assumption Agreement dated March 10, 2011 (collectively referred to as the "Assignment and Assumption Agreement"), whereby the City accepted the assignment of the rights under the DDA and an assumption of the obligations under the DDA in order to aid the Redevelopment Agency in expeditiously implementing the DDA in accordance with the Redevelopment Plan; and

**WHEREAS**, the Assignment and Assumption Agreement provides that the Redevelopment Agency was specifically not relieved of its obligations under the DDA and, thus, continued to retain its applicable rights and obligations under the DDA; and

**WHEREAS**, pursuant to that certain Grant Deed executed on March 9, 2011 and recorded in the official records of San Diego County as Instrument No. 2011-0141886 ("Grant Deed"), the Developer conveyed fee title of the Property to the City and the City accepted fee title of the Property from the Developer, in accordance with the terms of the DDA; and

**WHEREAS**, on or about March 15, 2011, the Redevelopment Agency and the Developer's Assignee completed the Closing (as said term is defined in the DDA) and the Redevelopment Agency and the Developer's Assignee executed all documents required by the DDA to complete the Closing (including the Ground Lease and the Recorded Documents as said term is defined in the DDA); and

**WHEREAS**, Assembly Bill No. X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the CRL and the California Health and Safety Code ("Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

**WHEREAS**, the Board of Directors of the Successor Agency adopted Resolution No. SA-12-01 on February 15, 2012, pursuant to Part 1.85 of AB 26, adopting the formal name of the Successor Agency as the "Imperial Beach Redevelopment Agency

Successor Agency" (hereinafter referred to as the "Successor Agency"), confirming that the Successor Agency is a distinct and separate legal entity from the City, and establishing rules and regulations for the Successor Agency's governance and operations; and

**WHEREAS**, on June 27, 2012, the State Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012) as a trailer bill for the Fiscal Year 2012-2013 State budget package. Although the primary purpose of AB 1484 is to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of the AB 26, AB 1484 also imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind-down process of former redevelopment agencies (AB 26 and AB 1484 are hereinafter collectively referred to as AB 26/AB 1484); and

**WHEREAS**, pursuant to Section 34173(a) of the Health and Safety Code, as of February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the Redevelopment Agency under the CRL (including those set forth in the DDA) are now vested in the Successor Agency by operation of law; and

**WHEREAS**, pursuant to Section 34175(a) of the Health and Safety Code, all assets, properties, contracts (such as the DDA and all Closing documents executed by the Redevelopment Agency), leases (such as the Ground Lease executed by the Redevelopment Agency), books and records, buildings, and equipment of the Redevelopment Agency, including the legal and contractual restrictions on the use of these funds and assets, transferred on February 1, 2012 to the Successor Agency by operation of law; and

**WHEREAS**, pursuant to AB 26/AB 1484, including without limitation Sections 34173, 34174, 34175, and 34177 of the Health and Safety Code, the Successor Agency shall perform all obligations of the Redevelopment Agency pursuant to enforceable obligations, which include all legally binding and enforceable agreements or contracts (such as the DDA and all Closing documents executed by the Redevelopment Agency); and

**WHEREAS**, the DDA contemplates that the Redevelopment Agency would receive fee title of the Property from the Developer and the Redevelopment Agency has executed each of the applicable Closing documents, including without limitation the Ground Lease with the Developer's Assignee; and

**WHEREAS**, the Successor Agency has succeeded to all of the Redevelopment Agency's rights and obligations set forth in the DDA and applicable Closing documents on February 1, 2012 by operation of law under AB 26/AB 1484; and

**WHEREAS**, for consistency with the DDA and the Closing documents, the Successor Agency desires to acknowledge and reaffirm the Successor Agency's rights and obligations set forth in the DDA and all documents executed by the Redevelopment Agency pursuant to the DDA and to accept the transfer from the City all of the City's ownership interest in the Property received by the City pursuant to the Grant Deed; and

**WHEREAS**, the Successor Agency's processing of documentation reflecting ownership of the Property by the Successor Agency is not intended to waive, and shall

not constitute a waiver, by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26/AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26/AB 1484, and any and all related legal and factual issues, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity; and

**WHEREAS**, a Final Environmental Impact Report (FEIR) was prepared and certified in December 2007 and an Addendum to the FEIR was approved on December 1, 2010 for the Project contemplated by the DDA pursuant to the provisions of the California Environmental Quality Act ("CEQA"). This activity has been determined to be adequately addressed in the FEIR and the Addendum to the FEIR for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*) and the City's environmental guidelines; and

**WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have been met.

**NOW, THEREFORE, BE IT RESOLVED** by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1:** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2:** The Successor Agency hereby acknowledges and reaffirms the Successor Agency's rights and obligations set forth in the DDA and all documents executed by the Redevelopment Agency pursuant to the DDA.
- Section 3:** The Successor Agency hereby approves, authorizes, and directs the Successor Agency's acceptance of all of the City's ownership interest in the Property received by the City pursuant to the Grant Deed.
- Section 4:** The Executive Director, or designee, is hereby authorized and directed to process documentation reflecting and confirming the Successor Agency's ownership of the Property, including the execution of a certificate(s) of acceptance or other appropriate instrument, and to take such actions and execute such documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.
- Section 5:** The Successor Agency's processing of documentation reflecting ownership of the Property by the Successor Agency is not intended to waive, and shall not constitute a waiver, by the City of any constitutional, legal or equitable rights that the City may have to challenge, through administrative or judicial proceedings, the

effectiveness and/or legality of all or any portion of AB 26/AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26/AB 1484, and any and all related legal and factual issues, and the City expressly reserves any and all rights, privileges, and defenses available under law and equity.

**Section 6:** A Final Environmental Impact Report (FEIR) was prepared and certified in December 2007 and an Addendum to the FEIR was approved on December 1, 2010 for the Project contemplated by the DDA pursuant to the provisions of the California Environmental Quality Act ("CEQA"). This activity has been determined to be adequately addressed in the FEIR and the Addendum to the FEIR for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*) and the City's environmental guidelines.

**Section 7:** This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 3<sup>rd</sup> day of October 2012, by the following vote:

<b>AYES:</b>	<b>BOARD MEMBERS:</b>	<b>BILBRAY, KING, SPRIGGS, JANNEY</b>
<b>NOES:</b>	<b>BOARD MEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>BOARD MEMBERS:</b>	<b>BRAGG</b>

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/s/  
**JAMES C. JANNEY**  
**CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_  
/s/  
**JACQUELINE M. HALD, MMC**  
**SECRETARY**